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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,327	02/17/2004	Yan Wang	944-003.103-2	9418
4955 7590 01/23/2008 WARE FRESSOLA VAN DER SLUYS & ADOLPHSON, LLP BRADFORD GREEN, BUILDING 5 755 MAIN STREET, P O BOX 224 MONROE, CT 06468			EXAMINER CHO, HONG SOL	
			ART UNIT 2619	PAPER NUMBER
			MAIL DATE 01/23/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/781,327

Applicant(s)

WANG ET AL.

Examiner

Hong Cho

Art Unit

2619

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 4, 11, 29, 32, 39, 58 and 61 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4, 11, 29, 32, 39, 58 and 61 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. This office action is in response to the amendment filed on 12/20/2007. Claims 1, 4, 11, 29, 32, 39, 58 and 61 are pending in the instant application.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the

conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1, 11, 29 and 39 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 22 and 32 of U.S. Patent No. 6717931 (hereinafter referred to as Wang). Although the conflicting claims are not identical, they are not patentably distinct from each other because:

Claim 1 differs from patent claim 22 in that present claim 1 lacks the steps of determining is carried out at the mobile station, and counting of TPC which makes present claim 1 a broader version of claim 22. Such a change is deemed obvious in broadening the scope of the patent claim 22.

Claim 29 is a broader version of patent claim 32 as shown in the rejection of claim 1 and such a change is deemed obvious in broadening the scope of the patent claim 32.

Claims 11, 39 correspond substantially to patent claims 18, 28 which teach transmitting a TPC.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made

to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 29, 58 and 61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fiorini et al (US 6760596), hereinafter referred to as Fiorini, in view of Bourlas et al (US 7023798), hereinafter referred to as Bourlas.

Re claims 1, 29, 58 and 61, Fiorini discloses measuring a carrier-signal-to-interference-signal level (C/I) (*predetermined parameter, signal-to-interference ratio as in claims 58 and 61*) of an uplink as a function of time (*determining that a fluctuation of a predetermined parameter related to a radio link channel transmission exists, figure2; column 5, lines 45-49*). Fiorini discloses comparing a transmit power to two different thresholds (column 5, lines 62-65) and changing uplink-transmit bit rate by changing a spreading factor (column 2, lines 21-23) to keep the transmit power between two thresholds (column 5, line 66 to column 6, line 5) (*changing a spreading factor used for uplink channel spreading to counteract said fluctuation in order to keep a predetermined parameter related to said fluctuation substantially near a threshold value by increasing or decreasing said spreading factor*). Fiorini discloses adjusting C/I by adjusting a spreading factor to ensure a desired frame or block error rate to maintain acceptable link quality (*changing the spreading factor if frame or block error rate meets a selected criterion, (column 1, lines 43-52; column 2, lines 21-25)*). Fiorini fails to disclose determining a frame or block error rate of the radio uplink channel. Bourlas discloses measuring bit error rate of the uplink (column 14, lines 19-21). It would have been

obvious to one having ordinary skill in the art at the time the invention was made to modify the system of Fiorini with the teaching of Bourlas in measuring BER for the benefit of improving uplink quality.

Claims 4, 11, 32 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fiorini in view of Bourlas and further in view of Sadri (US 6690652).

Re claims 4, 11, 32 and 39, Fiorini and Bourlas disclose all of the limitations of the base claim, but fail to disclose changing a spreading factor by receiving a spreading factor control signal from the network followed by the mobile station changing the spread factor. Sadri discloses changing a spreading factor (SF) based on a threshold set by the BS or changing transmit power level (transmit power control signal in claims 11 and 39) (column 7, lines 63-65; column 8, lines 6-15). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system of Fiorini and Bourlas with the teaching of Sadri in receiving SF or power control signal so that power level for uplink transmission would be controlled by a network or base station.

Response to Arguments

6. Applicant's arguments filed on 12/20/2007 have been fully considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hong Cho whose telephone number is 571-272-3087.

The examiner can normally be reached on Mon-Fri during 7 am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wing Chan can be reached on 571-272-7493. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


WING CHAN
SUPERVISORY PATENT EXAMINER
1/22/08

Hong Cho
Patent Examiner
1/17/08